

**LEVI & KORSINSKY, LLP**

Adam M. Apton (SBN 316506)

Adam C. McCall (SBN 302130)

388 Market Street, Suite 1300

San Francisco, CA 94111

Tel.: (415) 373-1671

Email: aapton@zlk.com

amccall@zlk.com

*Attorneys for Plaintiff and Counsel for the Class*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN RE TESLA, INC. SECURITIES  
LITIGATION

Case No. 3:18-cv-04865-EMC

**[PROPOSED] ORDER GRANTING  
PLAINTIFF'S MOTION FOR  
PARTIAL SUMMARY JUDGMENT**

Date: March 10, 2022

Time: 1:30 p.m.

Location: Courtroom 5, 17<sup>th</sup> Floor

Judge: Hon. Edward Chen

The motion of Lead Plaintiff Glen Littleton ("Plaintiff") against Defendants Tesla, Inc., Elon Musk, Brad W. Buss, Robyn Denholm, Ira Ehrenpreis, Antonio J. Gracias, James Murdoch, Kimbal Musk, and Linda Johnson Rice ("Defendants") for partial summary judgment pursuant to Federal Rule of Civil Procedure 56 came on regularly for hearing before the Court on March 10, 2022. The parties were represented by their respective counsel of record.

After considering the papers submitted by the parties and the argument of counsel, the Court holds that Plaintiff is entitled to partial summary judgment against Defendants on the elements of falsity, scienter, and reliance for his claims under Section 10(b) of the Securities Exchange Act of 1934, 15 U.S.C. §78j(b), and SEC Rule 10b-5, 17 C.F.R. §240.10b-5, concerning Elon Musk's tweets on August 7, 2018 and blog post on August 13, 2018.

Summary judgment is proper where there is "no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." FED. R. CIV. P. 56(a). A factual dispute

1 is material only when it “might affect the outcome of the suit under the governing law,” and is  
 2 genuine “if the evidence is such that a reasonable jury could return a verdict for the nonmoving  
 3 party based upon it.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986).

4 Section 10(b) of the Exchange Act and Rule 10b-5(b) prohibit persons from making any  
 5 untrue statements of material fact or omitting to state material facts when necessary to make the  
 6 statements made, in light of the circumstances under which they were made, not misleading in  
 7 connection with the purchase or sale of a security. 17 C.F.R. §240.10b-5(b). To establish liability  
 8 for a violation of these provisions, a plaintiff must prove the following elements: “(1) a material  
 9 misrepresentation or omission by the defendant; (2) scienter; (3) a connection between the  
 10 misrepresentation or omission and the purchase or sale of a security; (4) reliance upon the  
 11 misrepresentation or omission; (5) economic loss; and (6) loss causation.” *Schueneman v. Arena*  
 12 *Pharm., Inc.*, 840 F.3d 698, 704 (9<sup>th</sup> Cir. 2016). With respect to falsity, scienter, and reliance,  
 13 Plaintiff has made this showing for the purposes of establishing his entitlement to summary  
 14 judgment and Defendants have failed to raise a material, triable issue of fact in response.

15 On August 7, 2018, Defendant Musk tweeted, *inter alia*, that: (1) “Am considering taking  
 16 Tesla private at \$420. Funding secured.”; and (2) “Investor support is confirmed. Only reason  
 17 why this is not certain is that it’s contingent on a shareholder vote.” The evidence shows  
 18 indisputably that no funding was “secured” at the time of these tweets because Musk did not have  
 19 any agreement, written or oral, from any individual or entity to provide financing for the going  
 20 private transaction at \$420 per share. The evidence also shows indisputably that investor support  
 21 was not “confirmed” at the time of the tweets because Musk had not yet spoken with any investor  
 22 who provided support for the transaction at the broadcasted price of \$420 per share. Moreover, a  
 23 number of contingencies in addition to the shareholder vote existed at the time of the tweet given  
 24 that Musk had not yet even provided Tesla’s Board of Directors with a formal proposal for the  
 25 transaction containing key terms, such as transaction structure, source of financing, and amount  
 26 of financing. The evidence shows that Musk knew these statements were false and/or materially  
 27 misleading at the time he made them given that he was present at the meeting with the Saudi  
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1 Public Investment Fund (“Saudi PIF”) on July 31, 2018 and participated directly in the relevant  
 2 conversations relating to the going private transaction.

3 On August 13, 2018, Musk posted on Tesla’s website the following blog post: “I have  
 4 continued to communicate with the Managing Director of the Saudi fund. He has expressed  
 5 support for proceeding subject to financial and other due diligence and their internal review  
 6 process for obtaining approvals. He has also asked for additional details on how the company  
 7 would be taken private, including any required percentages and any regulatory requirements.”  
 8 This appeared within a larger statement discussing the events preceding and following his August  
 9 7 tweets concerning his efforts to take Tesla private. This statement was materially misleading  
 10 insofar as it omitted that Musk was no longer considering the Saudi PIF as a source of funding  
 11 for the going private transaction.

12 Musk’s public statements on August 7 and 13, 2018 created an “impression of a state of  
 13 affairs that differ[ed] in a material way from the one that actually exists.” *Berson v. Applied Signal*  
 14 *Tech., Inc.*, 527 F.3d 982, 985 (9th Cir. 2008) (internal quotations omitted). They were  
 15 “deceptive” and, in light of the facts that existed at the time, “absolute and unequivocal  
 16 falsehood[s]” of which Musk was aware personally. *S.E.C. v. Platforms Wireless Int’l Corp.*, 617  
 17 F.3d 1072, 1094-95 (9th Cir. 2010). Defendants do not raise a material issue of fact in response  
 18 to Plaintiff’s showing. Therefore, partial summary judgment in favor of Plaintiff and against  
 19 Defendants on the elements of falsity and scienter is warranted.

20 Plaintiff is also entitled to partial summary judgment on the issue of reliance. The evidence  
 21 demonstrates a presumption of reliance in Plaintiff’s favor under *Basic Inc. v. Levinson*, 485 U.S.  
 22 224, 249-50 (1988). Defendants have not introduced any evidence capable of rebutting this  
 23 presumption.

24 Based on the foregoing and all papers and proceedings held hereon, it is HEREBY  
 25 ORDERED that Plaintiff’s motion for partial summary judgment is GRANTED in its entirety and  
 26 judgment is entered against Defendants on the elements of falsity, scienter and reliance with  
 27 respect to Musk’s tweets on August 7, 2018 and blog post on August 13, 2018.

1           **IT IS SO ORDERED.**

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3   Dated: \_\_\_\_\_

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4   Hon. Edward M. Chen  
5   United States District Judge  
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